

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

**BROWN OSBORNE AND
JENNIFER OSBORNE,**

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Plaintiffs,

)

NO. _____

V.

)

TERRY WHITEHEAD CONSTRUCTION, LLC

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And

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STATE FARM FIRE AND CASUALTY COMPANY

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)

Defendants.

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NOTICE OF REMOVAL

Defendant, State Farm Fire and Casualty Company (“State Farm”), incorrectly sued as State Farm Insurance in Plaintiffs’ Complaint, pursuant to 28 U.S.C. §§ 1441 and 1446, hereby gives notice that it is removing this civil action from the Circuit Court for Carter County, Tennessee to the United States District Court for the Eastern District of Tennessee at Greeneville.

1. On February 20, 2014, Plaintiffs Brown Osborne and Jennifer Osborne, commenced this civil action against Defendants Terry Whitehead Construction, LLC (“Whitehead Construction”) and State Farm in the Circuit Court for Carter County, Tennessee, Case No. C13209. The Complaint and Summons were served upon State Farm on or about February 28, 2014. Attached hereto is as **Exhibit A** is a copy of the Complaint which represents the entire contents of the state court file. The service of Summons and Complaint is the first notice State Farm received regarding the commencement of this action.

2. Upon information and belief, Plaintiffs are both residents of Moravian Falls, North Carolina.

3. Upon information and belief, Defendant Whitehead Construction is a Tennessee Limited Liability Company licensed to do business in Tennessee and with its principal place of business in Tennessee.

4. State Farm is a corporation organized and existing under the laws of Illinois with its principal place of business in the State of Illinois.

5. Plaintiffs Complaint alleges damages for improper construction and breach of contract for work performed by Defendant Whitehead Construction on real property located at 327 Old Steele Bridge Road, Elizabethton, Tennessee. Plaintiff further alleges that Defendant State Farm acted in bad faith and requests recovery of bad faith damages, as well as punitive damages.

6. Upon information and belief, the damages alleged by Plaintiffs exceed \$75,000.00, along with Plaintiffs' alleged statutory bad faith penalty of 25%, alleged Tennessee Consumer Protection Act claims, and request for punitive damages.

7. This Court has jurisdiction over the claims in the Complaint pursuant to 28 U.S.C. 1332 (diversity) because there is complete diversity between the Plaintiffs and the Defendants.

8. This notice of removal is being filed within thirty days of February 28, 2014, the date on which the summons and Complaint were first served on State Farm. Thus, this notice of removal is filed within thirty days after State Farm first received a copy of the initial pleading setting forth the claims for relief.

9. Pursuant to 28 U.S.C. § 1446(d), State Farm will promptly give notice of this notice of removal to the Clerk of Carter County Circuit Court, to counsel for Plaintiffs, and to

Defendant Whitehead Construction in the state court proceeding. The giving of such notice will effect this removal pursuant to 28 U.S.C. § 1446(b). A copy of the state court notice is attached as **Exhibit B**.

10. By removing this action, State Farm does not waive any defenses available to it in federal or state court and expressly reserves the right to assert all such defenses in its responsive pleading.

WHEREFORE, State Farm requests that further proceedings of the Carter County Circuit Court be discontinued and that this action be removed in its entirety to the United States District Court for the Eastern District of Tennessee at Greeneville.

Respectfully submitted this 21st day of March, 2014.

PAIN, TARWATER, and BICKERS, LLP

/s/ Matthew J. Evans

Matthew J. Evans (BPR #017973)
Katherine S. Goodner (BPR # 030499)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via U.S. Mail, postage prepaid, upon the following:

Randy Kennedy
625 Anderson Street
Bristol, Tennessee 37620
Attorney for Plaintiffs

Jonathan E. Roberts
Wohlford and Roberts
900 Anderson Street
Bristol, Tennessee 37620
Attorney for Plaintiffs

Terry Whitehead Construction, LLC
c/o Terry Whitehead
236 Price Road
Elizabethton, Tennessee 37643

This the 21st of March, 2014.

/s/ Matthew J. Evans